Sectt. II-27—100,006—21-6-52.

Finance (1948) Department.

No. SERIES.

G.O. No. 1134

Dated 7-12-48

[Despatch Abstract.]

Travelling Allowance - Former Secretary of State Officers - Mileage and Railway fare - Temporary increase - Reduction - Sanction of the Governor-General considered not necessary - Papers recorded.

Special

Office of the Chief Engr.
P.W.D. (General), Chepauk.

Endorsement No.5045-AD.2/48-1, dated 5th October 1948.

From the Superintending Engineer, Dowlaiswaram Circle, No.1336-W, dated 16-8-48.

Allowances - Travelling Allowance - Mileage and Railway fare - Temporary increase - Reduced - Information regarding.

Copy forwarded to Government for favour of orders.

C. Nagaratnam 7-10-49
for Chief Engineer P.W.D.(Genl.)

To the Secretary to Government, Public Works Department
(with a copy of the Suptg. Engineer's letter).

Copy of letter No.1336-W, dated 16-8-48 from the Suptg. Engineer, Dowlaiswaram Circle, to the Chief Engineer P.W.D. (General.)

Sub: Travelling allowance - Mileage and Railway fare - Temporary increase - Reduced - Information - solicited.

Ref: Financial G.O.No.711 dated 23-9-47 communicated with your Endorsement No.4287-Ad-2/47-CR, dated 12-11-47.

In the G.O. cited, the Government of Madras have reduced the rate of mileage to 0-9-0 for Govt. servants of Grades I and II with effect from 1-10-47. In this connection I am to enquire whether this reduction does not require the Government of India sanction so far as officers of formerly in the Secretary of State's Services are concerned on the analogy of orders issued by His Excellency the Governor-General conveyed in G.O.No.567-F, dated 7-6-48 of Government of Madras communicated with your Endorsement No. 3934-Ad-2/48, G.R. dated 22-7-1948. If such orders are available I request a copy of the same may kindly be sent to me for information and record.

(True copy)

Superintendent,
Madras Record Office.

aj/25.6

p.t.o.

No.711 Finance dated 23-9-1947 was already in force before that amendment was made in February 1948 the orders in the ~~x~~ G.O. stand and no subsequent sanction of the Governor-General is required.

The Chief Engineer may be informed accordingly. Legal may see to confirm whether the position stated above is correct.

** **
25-10-48.

Legal Deptt.

Since the wording of the proviso to section 247 is not that "no rule shall be made....." but that "no rule made under this section shall have effect....." it is possible to take the view that the proviso applies to every rule made under that section irrespective of the point of time when the rule was made. It seems therefore safer to proceed on the assumption that the proviso applies to the rule in G.O.No.711 Fin., dated 23-9-1947 although the rule was made prior to the insertion of the proviso.

Reference is also made at 'M' on the previous page to the sanction of the Governor-General. But the terms of the proviso are so mandatory that it does not appear that even if such sanction were to be obtained it would have the effect of validating the rule if it is hit by the proviso.

** **
10-11-1948.

Finance (C.S.R.) Deptt.

The Legal Department is of the view that even though G.O.No.711 Finance dated 23-9-1947 was in force prior to the amendment made to Sec. 247 of the Government of India Act in February 1948 it is possible to take the view that the proviso applies to every rule made under that section irrespective of the point of time when the rule was made. They suggest that it is safer to assume that the proviso applies to the rule in G.O. 711 Finance dated 23-9-1947 even though the rule was made prior to the insertion of the proviso. Legal evidently consider that the sanction of the Governor General will be necessary for applying the reduction in T.A. ordered in G.O.No.711 Finance dated 23-9-47 to officers appointed by the Secretary of State

No. They suggest that the view might be taken that the order is ultra vires of the Act.

~~Section~~ According to proviso to Sec. 247 of the Government of India Act, the Govt. of India's intention would seem to be applicable only in respect of permanent concessions enjoyed by Secretary of State Officers prior to 15th August 1947 and not to temporary concessions sanctioned on account of war conditions.

If Legal's suggestion at N on p.7 above is accepted, there is a legal impasse, as the order reducing the temporary increase in T.A. would be ultra vires the Government of India Act, and not only the Governor-General's consent but legislation by the Dominion Legislature would be necessary to make it legal. I suggest that it is not necessary to go to these lengths. The draft as it stands gives the legal point of view on which the Government has in fact acted in this and other cases. If the I.S.E. officers do not accept it they can memorialize. I would therefore suggest that the draft issues as it stands put up on 19-11-morning so that I ~~x~~ can discuss at the Conference.

Draft may issue
B.G.R. 25-11-48. 15-11-48
(Issued as Memo No.91417-C.S.R., dated 28-11-48)

Public Works Department.

A.D.S.

Please see pp.1-3 ante.

The point raised on p.3 ante has to be considered in Finance. The file may be sent to that Depatment for necessary action.

** **
16-10-48.

Finance (C.S.R) Deptt.

The fererence from the C.E. (General) on pp.1-3 above may be perused.

2. The reduction in mileage admissible to officers of grades I to II ordered in G.O.No.711 Finance, dated 23-9-47 affects the temporary increase of 50 % sanctioned during the war and it does not affect the permanent rates of As.8 and .7 sanctioned for grades I and II officers. Hence the question of obtaining the sanction of the Government of India in respect of the late Secretary of state's Officers does not arise.

The Secretary of State's Officers T.A. Rules do not apply, as they affect only deliberation of rules made prior to 1939.

But what about Cl. 247 of the Government of India Act as amended ? I think the recent amendment was subseqnent to (S), so the change already made in (S) would not be effected. But put up with the amendment and the file regarding dearness allowance.

** **
20-10-48.

Submitted.

A copy of the amendment to Sec. 247 of the Government of India Act is put up at flag (Z). The amendment was subsequent to G.O. 711 Finance dated 23-9-1947. The change already made would not therefore be affected.

The file regarding dearness allowance to ex-Secretary of State Officers is linked below.

The reason why the sanction of the Governor General was required to apply to orders in G.O.Ms.No.1 Fin. dated 3-1-48 to officers appointed by the Secretary of State was that the orders in that G.O. attracted the provisions of the Travelling Allowance of (Secretary of State Officers) Rules 1939, under which no alterations of the rules in force on 1st January 1939 which would operate to the ~~advantage~~ disadvantage of such officers could have effect without the approval of the Secretary of State. As the matter thus was one formerly regulated by the rules made by the Secretary of State, the consent of the Governor -General was required to apply the new rule to officers appointed by the Secretary of State. The position as regards the orders in G.O.No.711 Fin. dated 23-9-47 ~~m~~ is different, as these orders merely reduced to a certain extent the temporary increase in travelling allowance granted by the Madras Government during the war, and the rules as amended remained not less favourable than those in force on 1st January 1939. It is true that Sec. 247 of the Government of India Act, 1935 has subsequently been amended to provide that no rule made under the section should have effect to give officers appointed by the Secretary of State less favourable terms as regards travelling allowance than were in force immediately before 15-8-1947, but as G.O.

Finance (C.S.R.) Deptt.

The papers may be recorded for future reference.

Order Ms.No.1134 dated 7-12-1948

Recorded.

Abstract

Travelling Allowance - Former Secretary of State Officers - Mileage and Railway Temporary Increase - Reduction - Sanction of the Governor-General considered not necessary - Papers recorded.

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6-12-1948.

GOVERNMENT OF MADRAS
Finance Department
***

Memorandum No.91417-C.S.R.-1, dated 25th November, 1948.

Allowances - Travelling Allowance - Mileage and Railway fare - Temporary increase - Reduced - Clarification of rules

From the Chief Engineer (General) Endorsement No.5045-Ad.2/48-1, dated 5-10-1948.

The Chief Engineer is informed that the reason why the sanction of the Governor-General was required to apply the orders in G.O.Ms.No.1 Fin, dated 3-1-48 to officers appointed by the Secretary of State was that the orders in that G.O. attracted the provisions of the Travelling Allowances (Secretary of State Officers) Rules, 1939, under which no alterations of the rules in force on 1-1-39 which would operate to the disadvantage of such officers could have effect without the approval of the Secretary of State. As the matter thus was one formerly regulated by the rules made by the Secretary of State, the consent of the Governor-General was required to apply the new rule to officers appointed by the Secretary of State. The position as regards the orders in G.O.No.711 Finance, dated 23-9-47 is different, as these orders merely reduced to a certain extent the temporary increase in travelling allowance granted by the Madras Government during the war, and the rules as amended remained not less favourable than those in force on 1st January 1939. It is true that Sec. 247 of the Government of India Act, 1935, has subsequently been amended to provide that no rule made under the section should have effect to give officers appointed by the Secretary of State less favourable terms as regards travelling allowance than were in force immediately before 15-8-47, but as G.O.No.711 Finance dated 23-9-47 was already in force before that amendment was made in February 1948 the orders in the G.O. stand and no subsequent sanction of the Governor-General is required

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25-10-1948

To the Chief Engineer P.W.D(General), Chepauk, Madras.

(True copy)

Superintendent,
Madras Record Office.

26-6-53.